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HU CHANG PEE

v.

TAN SRI DATUK PADUKA (DR) TING PEK KHIING

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COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF JCA
SULONG MATJERAIE JCA
AHMAD MAAROP JCA
[CIVIL APPEAL NO: Q-02-440-1999]

C

22 JANUARY 2010

LEGAL PROFESSION: *Practice of law - Advocates and solicitors - Right of audience - Appeals before Court of Appeal sitting at Putrajaya against decision of High Court in Sarawak - Whether appearance of*

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advocates from Sarawak rendered order of court null and void - Datuk Hj Mohammad Tufail Mahmud & Ors v. Dato Ting Check Sii - Courts of Judicature Act 1964, ss. 39, 75

By way of notice of motion in encl. 22(a), the respondent was moving this court to set aside or vacate the order of this court

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dated 21 June 2004. The main ground of this application was that this court sitting at Putrajaya on the said date hearing an appeal from the High Court of Sabah and Sarawak had no jurisdiction to hear such appeal and the advocates for Sarawak had no right to

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appear at Putrajaya to argue the appeal from Sarawak.

Held (dismissing respondent's application in encl. 22(a))
Per Raus Sharif JCA:

(1) The decision of the Federal Court in *Mohammad Tufail* had

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established beyond doubt that the appearance of advocates from Sarawak in the Court of Appeal sitting in Putrajaya and the hearing of such an appeal was proper and in accordance with the law. An advocate from Sarawak has the right of audience in the Court of Appeal sitting in Putrajaya, when the matter under

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appeal emanated from the High Court of Sabah and Sarawak. In the present case, the matter emanated from the High Court Miri, Sarawak. Thus, the appearance of both counsel from Sarawak in the Court of Appeal at Putrajaya did not render the order of this court dated 21 June 2004 null and void. (paras 10

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& 12)

(2) There was no reason why this Court could not sit in Putrajaya hearing over matters emanating from Sarawak since s. 39 of the Courts of Judicature Act 1964 clearly provides that the President has the power to determine where and when any appeal may be heard. Similar powers are given in s. 75 of the Courts of Judicature Act 1964 to the Chief Justice with regard to the sittings of the Federal Court. The two sections clearly empowers the President or the Chief Justice to direct any appeal in the Court of Appeal or Federal Court respectively, be heard in any place in Malaysia. (paras 14 & 15)

Bahasa Malaysia *Translation Of Headnotes*

Melalui notis usul di dalam lampiran 22(a), responden membuat permohonan untuk mahkamah ini mengenepikan atau menarik balik perintah mahkamah bertarikh 21 Jun 2004. Alasan utama permohonan ini adalah mahkamah ini yang bersidang di Putrajaya pada tarikh tersebut membicara rayuan dari Mahkamah Tinggi Sabah dan Sarawak tidak mempunyai budibicara untuk membicara rayuan tersebut dan peguambela untuk Sarawak tidak mempunyai hak untuk menghadirkan diri di Putrajaya untuk berhujah dalam rayuan dari Sarawak.

Diputuskan (menolak permohonan responden di lampiran 22(a)) Oleh Raus Sharif HMR:

(1) Keputusan Mahkamah Persekutuan di dalam kes *Mohammad Tufail* membuktikan tanpa apa-apa keraguan bahawa kehadiran peguambela-peguambela dari Sarawak di dalam Mahkamah Rayuan yang bersidang di Putrajaya dan pendengaran rayuan adalah betul dan mengikut undang-undang. Peguambela dari Sarawak mempunyai hak untuk didengar di dalam Mahkamah Rayuan yang bersidang di Putrajaya, apabila perkara di dalam rayuan datangnya daripada Mahkamah Tinggi Sabah dan Sarawak. Di dalam kes ini, perkara datangnya daripada Mahkamah Tinggi, Miri, Sarawak. Oleh itu, kehadiran kedua-dua peguambela dari Sarawak di dalam Mahkamah Rayuan di Putrajaya tidak menyebabkan perintah mahkamah ini yang bertarikh 21 Jun 2004 terbatal dan tidak sah.

(2) Tidak ada apa-apa sebab mengapa mahkamah ini tidak boleh bersidang di Putrajaya mendengar mengenai perkara-perkara yang datangnya daripada Sarawak kerana s. 39 Akta Mahkamah Kehakiman 1964 dengan jelasnya menyatakan bahawa Presiden mempunyai kuasa untuk memutuskan di mana dan bila masa

A rayuan boleh dibicarakan. Kuasa yang sama diberi di dalam s. 75 Akta Mahkamah Kehakiman 1964 kepada Ketua Hakim Negara mengenai persidangan-persidangan Mahkamah Persekutuan. Kedua-dua seksyen tersebut dengan jelasnya memberi kuasa kepada Presiden atau Ketua Hakim Negara
B untuk mengarahkan apa-apa rayuan di dalam Mahkamah Rayuan atau Mahkamah Persekutuan masing-masing, boleh dibicarakan di mana-mana kawasan di Malaysia.

Case(s) referred to:
C *Abdul Karim Abdul Ghani v. Legislative Assembly of Sabah [1988] 1 CLJ 460; [1988] 1 CLJ (Rep) 1 SC* ***(refd)***
Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***
Datuk Hj Mohammad Tufail Mahmud & Ors v. Dato' Ting Check Sii [2009] 4 CLJ 449 FC ***(refd)***
Malaysian Bar v. Mutang Tagal [1984] 1 LNS 106 FC ***(refd)***

D **Legislation referred to:**
Courts of Judicature Act 1964, ss. 39, 75

For the appellant - Dato' Muhammad Shafee Abdullah (Victor Wong Lit Fah & Bong Ah Loi with him); M/s Suhaili Bong & Co
E *For the respondent - Lim Heng Choo (Lee Heng Cheong with him); M/s Lim & Lim*

[Appeal from High Court; Suit No: 22-139-98 (MR)]

Reported by Suhainah Wahiduddin
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JUDGMENT

Raus Sharif JCA:

G **[1]** By way of notice of motion in encl. 22(a) the respondent is moving this court to set aside or vacate the order of this court dated 21 June 2004. The reason for such prayer was because it was the respondent's submission that this court sitting in Putrajaya had
H no jurisdiction to hear any appeal from the High Court of Sarawak and/or when an advocate of the High Court of Sarawak appeared in the sitting in Putrajaya. This lack of jurisdiction rendered the order of this Court dated 21 June 2004 null and void.

I **[2]** We heard encl. 22(a) at our sitting in Kuching, Sarawak on 5 October 2009. Having heard the submissions of the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

[3] The events leading to the filling of encl. 22(a) are as follows. The appellant had filed a writ action against the respondent to claim the sum of RM8.5 million with interest thereon. On 7 May 1999, the High Court at Miri, Sarawak ordered that the action be struck out and dismissed with costs.

[4] Aggrieved, the appellant filed an appeal to this court. On 21 June 2004, this court sitting at Putrajaya allowed the appeal and restored the High Court suit for trial. The hearing of the appeal at Putrajaya was attended by advocates of Sarawak from the both sides.

[5] Consequent thereto, the High Court proceeded with the trial. On 3 December 2007, the High Court at Miri, Sarawak entered judgment against the respondent and ordered the respondent to pay the respondent the sum of RM8.5 million with interest thereon and costs.

[6] The respondent had, on the 4 December 2007 appealed to the Court of Appeal against the said decision. While the appeal was still pending, the respondent on 29 April 2008 filed this notice of motion as in encl. 22(a) seeking that the order of this court made on 21 June 2004 be set aside and/or vacated.

[7] The main ground of this application is that this court sitting at Putrajaya on 21 June 2004 hearing an appeal from the High Court of Sabah and Sarawak had no jurisdiction to hear such appeal and the advocates for Sarawak had no right to appear at Putrajaya to argue the appeal from Sarawak.

[8] Dato' Muhamad Shafee Abdullah, learned counsel for the applicant, at the outset acknowledged that the recent Federal Court case of *Datuk Hj Mohammad Tufail Mahmud & Ors v. Dato' Ting Check Sii* [2009] 4 CLJ 449 ("*Mohammad Tufail*"), had ruled on this matter. Nevertheless he submitted that the Federal Court decision was made without a thorough consideration of whether, irrespective of the question of the legal competency of counsel appearing before the Court of Appeal sitting in Putrajaya, the Court of Appeal has jurisdiction/power to sit in Putrajaya over matters emanating from Sarawak. It was also contended that the decision was made *per incuriam* of the long established decisions of the Supreme Court and the Federal Court in various cases; and that it failed to adhere to the principle that with the clear wording of a statute, the golden rule and the purposive approach to interpretation had no role to play.

[9] Thus, Dato' Muhamad Shafee urged us not to follow the decision of the Federal Court in *Mohammad Tufail*. Instead he asked us to follow the decision of the Supreme Court case of *Abdul Karim Abdul Ghani v. Legislative Assembly of Sabah* [1988] 1 CLJ 460; [1988] 1 CLJ (Rep) 1 SC ("Abdul Karim") and the Federal Court case of *Malaysian Bar v. Mutang Tagal* [1984] 1 LNS 106 FC ("Mutang Tagal").

[10] With utmost respect, we are of the view that the two cases referred to were not exactly on point. However, even if they were on point, the decision in *Mohammad Tufail* being the later decision of the Federal Court prevails over the earlier decision of *Abdul Karim* and *Mutang Tagal* (See *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645 FC). More importantly, the decision of the Federal Court in *Mohammad Tufail* had established beyond doubt that the appearance of advocates from Sarawak in the Court of Appeal sitting in Putrajaya and the hearing of such an appeal was proper and in accordance with the law.

[11] In *Mohammad Tufail*, two questions were posed to the Federal Court:

(i) Whether an advocates and solicitors from Peninsular Malaysia are entitled to appear as counsel in an appeal to be heard in Putrajaya arising from a matter originating from the High Court in Sabah and Sarawak at Kuching.

(ii) Whether an advocate from Sarawak is entitled to appear as counsel in an appeal to be heard (by the Court of Appeal) in Putrajaya arising from matter originating from the High Court in Sabah and Sarawak at Kuching.

[12] The Federal Court answered the first question in the negative and the second question in the affirmative. The effect of the answer to the second question is that, an advocate from Sarawak has the right of audience in the Court of Appeal sitting in Putrajaya, when the matter under appeal emanated from the High Court of Sabah and Sarawak. We have no reason to depart from the said decision. In the present case, the matter emanated from the High Court Miri, Sarawak. Thus, the appearance of both counsel from Sarawak in the Court of Appeal at Putrajaya did not render the order of this Court dated 21 June 2004 null and void.

[13] On the issue that the Court of Appeal or for that matter the Federal Court cannot sit in West Malaysia over appeals involving matters arising from Sabah or Sarawak, our short answer is ss. 39 and 75 of the Courts of Judicature Act 1964. Section 39 refers to the sittings of the Court of Appeal while s. 75 refers to the sittings of the Federal Court.

[14] Under s. 39, it is provided that the Court of Appeal shall sit on such dates and at such places as the President may from time to time appoint. And it also provided that the President may when it deems it expedient, direct that any appeal be heard at any time and in any place in Malaysia. Similar powers are given in s. 75 of the Courts of Judicature Act 1964 to the Chief Justice with regard to the sittings of the Federal Court. The two sections clearly empowers the President or the Chief Justice to direct any appeal in the Court of Appeal or Federal Court respectively, be heard in any place in Malaysia.

[15] Therefore, we see no reason why this court cannot sit in Putrajaya hearing over matters emanating from Sarawak since s. 39 of the Courts of Judicature Act 1964 clearly provides that the President has the power to determine where and when any appeal may be heard.

[16] For the aforesaid reasons, the respondent's application in encl. 22(a) must be dismissed with costs.